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DEPARTMENT FOR SRAP, SCA/A, INL, EUR/PRM, INR, OSD FOR
FLOURNOY, CENTCOM FOR CG CJTF-82, POLAD, JICENT KABUL FOR
COS USFOR-A

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TAGS: [PREL](#) [PGOV](#) [MARR](#) [AF](#)

SUBJECT: LEGAL ADVISER KOH PRESSES ATTORNEY GENERAL ON RULE
OF LAW, JUVENILE DETENTIONS

Classified By: DEPUTY AMBASSADOR FRANCIS J. RICCIARDONE FOR REASONS 1.4
(B) AND (D)

¶1. (S) SUMMARY: Holding juveniles in an adult prison facility, one-hundred-fifty pre-trial releases of detainees that the U.S. has transferred to the GIROA in the last two-years, several notable cases of presidential pardons for convicted narco-traffickers, and other examples of high level GIROA influence on court decisions make it difficult for the USG to trust that President Karzai and Afghan Attorney General Muhammad Ishaq Aloko are committed to the rule of law process. Legal Adviser Harold Hongju Koh and Deputy Ambassador Frances Ricciardone delivered this message to Aloko on July 29th. They emphasized that this is a particularly troubling trend at a time when U.S. troops are being killed to help extend the reach of Afghan government authority to some of the most dangerous parts of Afghanistan. Koh told Aloko he planned to share these concerns with Secretary Clinton and with President Obama in the coming days. He stressed that the USG and American people, through Congress, will be reluctant to sustain our support for Afghanistan if the GIROA fails to do its part to end such practices and to strengthen the rule of law. END SUMMARY

ALOKO,S RESPONSE TO CONCERNS

¶2. (S) In a July 29 meeting with Attorney General Aloko, Legal Adviser Harold Hongju Koh and Deputy Ambassador Francis Ricciardone pressed Aloko on the release without trial of detainees transferred from Bagram and Guantanamo to Afghan custody, and convicted narco-traffickers. Koh had visited the Afghan National Detention Facility (ANDF), Pol-i-Charki, the Counternarcotics Justice Center, and Bagram before seeing Aloko. Koh reported that he has observed juvenile detainees as young as 13 years old being held in the ANDF, an adult facility, and urged their immediate transfer to a juvenile detention center. On pretrial pardons, Koh also told Aloko that he would have difficulty reporting to his superiors in the USG that he had confidence in the Afghan government,s legal system to maintain public order when that government was releasing dangerous individuals into Afghan society without trial. Aloko claimed that his office gives close attention to juvenile cases, but admitted some might get lost in bureaucratic processing. He agreed to order a review of the handling of juvenile cases.

¶3. (S) When Ricciardone explained to Aloko about the crucial link between rule of law and sovereignty, Aloko challenged the Ambassador to define sovereignty, and declared that decisions about releases were Afghan problems,8 implying that the U.S. should stay out of them. Ambassador Ricciardone pressed Aloko on why, contrary to explicit agreement, the GIROA allowed 150 pre-trial releases from the ANDF, including the recent release

without trial of Abdullah Shahab, nephew of anti-American Mujahideen leader Gulbuddin Hekmatyar. Shahab had admitted to video-taping attacks against U.S. forces for use as Taliban propaganda. Aloko responded that a familial relationship to Hekmatyar had nothing to do with Shahab,s case and that his camera activities were not illegal. Aloko argued that when the U.S. transfers detainees to the GIRoA, the U.S.-provided evidence against some detainees is insufficient for prosecution, so he is sometimes left with no other choice than to release the detainee rather than let their cases take up time in already overburdened courts. (Comment: Each transfer from Bagram to ANDF occurs though case-by-case arrangement between U.S. Forces and prosecutors from the AG,s office determine that sufficient evidence exists against the individual detainees for the AG to bring them to trial. End Comment)

¶4. (S) Aloko argued that he has the authority ,, to recommend pre-trial releases, though he claimed to have no involvement in the pre-trial releases or pardoning of narco-traffickers we outlined to him. (Note: Aloko,s claimed lack of involvement in the narcotics cases is not credible.) Aloko,s responses contrasted with the more candid admission of Karzai,s chief of staff Mohammed Umer Daudzai to Ricciardone only hours before. Daudzai had told us he was ashamed of Karzai for pardoning several narco-traffickers. He added that there was no defense for these moves, that he did not support the pardons, and that he would work to prevent any future cases, such as two pending cases that Ricciardone had brought to his (and Aloko,s) attention.

¶5. (U) Septel will summarize our list of pending complaints against the GIRoA,s handling of detainees - both pre-trial releases of U.S. transfers to ANDF and presidential pardons of narco-traffickers convicted in Afghanistan,s own courts. EIKENBERRY